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10/510,436	10/06/2004	Andrew Silver	139355WOUS	1528
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ALCATEL LUCENT INTELLECTUAL PROPERTY & STANDARDS 3400 W. PLANO PARKWAY, MS LEGL2 PLANO, TX 75075			EXAMINER CLARK, MAXWELL A	
			ART UNIT	PAPER NUMBER
			2616	
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			09/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,436

Applicant(s)

SILVER ET AL.

Examiner

MAXWELL A. CLARK

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 16, the phrase "using the mobile identity to retrieve a selection of the plurality of Internet Audio contents" renders the claim indefinite because it is unclear how using a mobile identity to retrieve a selection of the plurality of Internet Audio contents is accomplished. It is unclear how simply an identity, such as the mobile identity, can achieve an action such as retrieving a selection of a plurality of Internet Audio contents.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu et al. (US 2003/0134622 A1) in view of Dusse (US 2002/0068544 A1).

Regarding claim 1, Hsu discloses providing Internet based audio to a user in a wireless Network (¶0045, ¶0046 wherein the wireless communication system supporting a broadcast system, ¶0038, wherein the broadcast service comprises IP packets to

multiple users providing audio streams, corresponds to providing Internet based audio to a user in a wireless network), initiating a request to establish a Point to Point (PPP) session from a mobile station (MS) to a Packet Data Service Node (PDSN) (fig. 2, fig. 6, ¶0064, wherein the MS 210 that desires to receive the service may establish a connection with the PDSN 206 at time t4 through the BS corresponds to initiation a request to establish a session from a mobile station (MS) to a Packet Data Service Node (PDSN). Hsu does not expressly disclose establishing a PPP session. Examiner takes official notice that it was well known in the art at the time of the application that the Packet Data Serving Node, or PDSN, is a component of a CDMA2000 mobile network and it acts as the connection point between the Radio Access and IP networks wherein the PDSN is responsible for managing PPP sessions between the mobile provider's core IP network and the mobile station. Hsu discloses establishing a connection from the PDSN to an Internet Audio Gateway to register the MS with the Internet Audio Gateway (fig. 2, ¶0064, wherein the BS is the Internet Audio Gateway which establishes the connection from the PDSN to MS, ¶0106, wherein the BS sets the field HSBS_REG_USED when the to register the MS with the BS/Internet Audio Gateway), establishing a Wireless Application Protocol (WAP) session between the MS and a WAP gateway (¶0059, wherein the broadcast content communicated though the Wireless Application Protocol (WAP), in which the main use for WAP is to enable access to the internet from a mobile phone or PDA , therefore the mobile phone acts through WAP, hence MS acts as the WAP gateway together with the WAP disclosed), selecting from a plurality of Internet Audio contents to play on the MS via the WAP

gateway (§0038, wherein the broadcast service provides IP packets comprising audio streams and the subscribers have the ability to “tune in” to a designated channel which corresponds to selecting from a plurality of Internet Audio contents to play on the MS via the WAP gateway), Hsu discloses receiving a call from the MS at the Internet Audio Gateway and sending the selection of the plurality of Internet Audio contents to the MS (§0064, wherein the MS establishing a connection with the PDSN through the BS, i.e. Internet Audio Gateway, corresponds to receiving a call from the MS at the Internet Audio Gateway and receiving the broadcast service from the CS through the PDSN and the BS corresponds to sending the selection of the plurality of Internet Audio contents to the MS). Hsu does not expressly disclose the call to the Internet Audio Gateway including a mobile identity identifying the MS within a network. Dusse discloses a device ID for the purpose of identifying the mobile device t outside entities, §0037. It would have been obvious to one of ordinary skill in the art at the time of the application to include device identification in Hsu, as in Dusse, for the purpose of identifying the mobile device in a user account to enable billing for services used.

Regarding claim 2, Hsu discloses the content to include news and weather, §0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio contents includes selecting from a set of cities. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of cities to provide the local news and weather.

Regarding claim 3, Hsu discloses the content to include news and weather, ¶0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio contents includes selecting from a set of audio contents that are within a geographic region. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of audio contents that are within a geographic region to provide the local news and weather.

Regarding claim 4, Hsu discloses selecting from a plurality of Internet Audio contents includes selecting from a plurality of radio stations (¶0056, wherein subscribers to the broadcast service "tune in" to a designated channel, i.e. one of the audio streams, corresponds to selecting from a plurality of Internet Audio contents includes selecting from a plurality of radio stations).

Regarding claim 5, Hsu discloses changing the selection of the plurality of Internet Audio contents (¶0038 wherein subscribers to the broadcast service "tuning in" to a designated channel corresponds to changing the selection of the plurality of Internet Audio contents).

Regarding claims 6 Hsu discloses a wireless system that employs spread spectrum techniques designed to support standards such as the "TIA/EIA/IS-95-B Mobile Station-Base Station Compatibility Standard for Dual-Mode Wideband Spread Spectrum Cellular System" referred to herein as the IS-95 standard, the standard offered by a consortium named "3rd Generation Partnership Project" referred to herein as 3GPP, and embodied in a set of documents including Document Nos. 3G TS 25.211,

3G TS 25.212, 3G TS 25.213, and 3G TS 25.214, 3G TS 25.302, referred to herein as the W-CDMA standard, the standard offered by a consortium named "3rd Generation Partnership Project 2" referred to herein as 3GPP2, and TR-45.5 referred to herein as the cdma2000 standard, formerly called IS-2000 MC. It would have been obvious to one of ordinary skill in the art at the time of the application for the MS utilizes a Global Service Messaging wireless standard for wireless communication as GSM is one of the most widely uses standards in the world.

Regarding claims 7, Hsu discloses the MS utilizes a Code Division Multiplexing Access protocol for wireless communication (§0046).

Regarding claim 8, Hsu discloses the audio content is streamed to the Internet Audio gateway and buffered and then sent to the MS (§0064, wherein an MS 210 that desires to receive the service may establish a connection with the PDSN 206 at time t4 through the BS 208 and may then begin receiving the broadcast/multicast service from the CS 202 through the PDSN 206 and the BS 208 at times t5 and t6 corresponds to the audio content is streamed to the Internet Audio gateway and buffered and then sent to the MS).

Regarding claim 9, Hsu discloses providing Internet based audio to a user in a wireless Network (§0045, §0046 wherein the wireless communication system supporting a broadcast system, §0038, wherein the broadcast service comprises IP packets to multiple users providing audio streams, corresponds to providing Internet based audio to a user in a wireless network), a Packet Data Service Node (PDSN) (fig. 2-206), a mobile station (MS) initiating a request to establish a session from the mobile station

(MS) to the PDSN (fig. 2, fig. 6, ¶0064, wherein the MS 210 that desires to receive the service may establish a connection with the PDSN 206 at time t4 through the BS corresponds to a mobile station (MS) initiating a request to establish a session from the mobile station (MS) to the PDSN). Hsu does not expressly disclose establishing a PPP session. Examiner takes official notice that it was well known in the art at the time of the application that the Packet Data Serving Node, or PDSN, is a component of a CDMA2000 mobile network and it acts as the connection point between the Radio Access and IP networks wherein the PDSN is responsible for managing PPP sessions between the mobile provider's core IP network and the mobile station, an Internet Audio Gateway, wherein the PDSN establishes a connection to a Internet Audio Gateway to register the MS with the Internet Audio Gateway (fig. 2, ¶0064, wherein the BS is the Internet Audio Gateway which establishes the connection from the PDSN to MS, ¶0106, wherein the BS sets the field HSBS_REG_USED when the to register the MS with the BS/Internet Audio Gateway), a Wireless Application Protocol (WAP) Gateway, wherein a Wireless Application Protocol (WAP) Browser session is established between the MS and the WAP gateway (¶0059, wherein the broadcast content communicated though the Wireless Application Protocol (WAP), in which the main use for WAP is to enable access to the internet from a mobile phone or PDA , therefore the mobile phone acts through WAP, hence MS acts as the WAP gateway together with the WAP disclosed) , a plurality of Internet Audio contents to play on the MS, wherein the user selects from the plurality of Internet Audio contents via the WAP gateway (¶0038, wherein the broadcast service provides IP packets comprising audio streams and the subscribers

have the ability to "tune in" to a designated channel which corresponds to a plurality of Internet Audio contents to play on the MS, wherein the user selects from the plurality of Internet Audio contents via the WAP gateway), Hsu discloses receiving a call from the MS at the Internet Audio Gateway and sending the selection of the plurality of Internet Audio contents to the MS (§0064, wherein the MS establishing a connection with the PDSN through the BS, i.e. Internet Audio Gateway, corresponds to receiving a call from the MS at the Internet Audio Gateway) and receiving the broadcast service from the CS through the PDSN and the BS corresponds to sending the selection of the plurality of Internet Audio contents to the MS. Hsu does not expressly disclose the call to the Internet Audio Gateway including a mobile identity identifying the MS within a network. Dusse discloses a device ID for the purpose of identifying the mobile device t outside entities, §0037. It would have been obvious to one of ordinary skill in the art at the time of the application to include device identification in Hsu, as in Dusse, for the purpose of identifying the mobile device in a user account to enable billing for services used.

Regarding claim 10, Hsu discloses the content to include news and weather, §0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio contents includes selecting from a set of cities. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of cities to provide the local news and weather.

Regarding claim 11, Hsu discloses the content to include news and weather, §0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio

contents includes selecting from a set of audio contents that are within a geographic region. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of audio contents that are within a geographic region to provide the local news and weather.

Regarding claim 12 Hsu discloses an ability to change the selection of the plurality of Internet Audio contents (¶0038 wherein subscribers to the broadcast service "tuning in" to a designated channel corresponds to an ability to change the selection of the plurality of Internet Audio contents).

Regarding claims 13 Hsu discloses a wireless system that employs spread spectrum techniques designed to support standards such as the "TIA/EIA/IS-95-B Mobile Station-Base Station Compatibility Standard for Dual-Mode Wideband Spread Spectrum Cellular System" referred to herein as the IS-95 standard, the standard offered by a consortium named "3rd Generation Partnership Project" referred to herein as 3GPP, and embodied in a set of documents including Document Nos. 3G TS 25.211, 3G TS 25.212, 3G TS 25.213, and 3G TS 25.214, 3G TS 25.302, referred to herein as the W-CDMA standard, the standard offered by a consortium named "3rd Generation Partnership Project 2" referred to herein as 3GPP2, and TR-45.5 referred to herein as the cdma2000 standard, formerly called IS-2000 MC. It would have been obvious to one of ordinary skill in the art at the time of the application for the MS utilizes a Global Service Messaging wireless standard for wireless communication as GSM is one of the most widely uses standards in the world.

Regarding claims 14, Hsu discloses the MS utilizes a Code Division Multiplexing Access protocol for wireless communication (§§0046).

Regarding claims 15, Hsu discloses the audio content is streamed from the Internet Audio gateway to the MS (§§0064, wherein an MS 210 that desires to receive the service may establish a connection with the PDSN 206 at time t4 through the BS 208 and may then begin receiving the broadcast/multicast service from the CS 202 through the PDSN 206 and the BS 208 at times t5 and t6 corresponds to the audio content is streamed from the Internet Audio gateway to the MS).

Regarding claim 16, Hsu discloses providing Internet based audio to a user in a wireless Network (§§0045, §§0046 wherein the wireless communication system supporting a broadcast system, §§0038, wherein the broadcast service comprises IP packets to multiple users providing audio streams, corresponds to providing Internet based audio to a user in a wireless network), initiating a request to establish a Point to Point (PPP) session from a mobile station (MS) to a Packet Data Service Node (PDSN) (fig. 2, fig. 6, §§0064, wherein the MS 210 that desires to receive the service may establish a connection with the PDSN 206 at time t4 through the BS corresponds to initiation a request to establish a session from a mobile station (MS) to a Packet Data Service Node (PDSN), establishing a connection from the PDSN to an Internet Audio Gateway to register the MS with the Internet Audio Gateway (fig. 2, §§0064, wherein the BS is the Internet Audio Gateway which establishes the connection from the PDSN to MS, §§0106, wherein the BS sets the field HSBS_REG_USED when the to register the MS with the BS/Internet Audio Gateway), establishing a Wireless Application Protocol (WAP)

session between the MS and a WAP gateway (§0059, wherein the broadcast content communicated through the Wireless Application Protocol (WAP), in which the main use for WAP is to enable access to the internet from a mobile phone or PDA, therefore the mobile phone acts through WAP, hence MS acts as the WAP gateway together with the WAP disclosed), selecting from a plurality of Internet Audio contents to play on the MS via the WAP gateway (§0038, wherein the broadcast service provides IP packets comprising audio streams and the subscribers have the ability to "tune in" to a designated channel which corresponds to selecting from a plurality of Internet Audio contents to play on the MS via the WAP gateway). Hsu discloses receiving a call from the MS at the Internet Audio Gateway and streaming the selection of the plurality of Internet Audio contents to the MS (§0064, wherein the MS establishing a connection with the PDSN through the BS, i.e. Internet Audio Gateway, corresponds to receiving a call from the MS at the Internet Audio Gateway and receiving the broadcast service from the CS through the PDSN and the BS corresponds to streaming the selection of the plurality of Internet Audio contents to the MS). Hsu does not expressly disclose the call to the Internet Audio Gateway including a mobile identity identifying the MS within a network. Dusse discloses a device ID for the purpose of identifying the mobile device to outside entities, §0037. It would have been obvious to one of ordinary skill in the art at the time of the application to include device identification in Hsu, as in Dusse, for the purpose of identifying the mobile device in a user account to enable billing for services used. Examiner takes official notice that when streaming audio from an Internet Audio Gateway to a MS, the Internet Audio Gateway buffers the stream and sends out the

portions, i.e. packet bursts, of the audio content from the Gateway to the MS, as this is commonplace in streaming media.

Regarding claim 17, Hsu discloses the content to include news and weather, ¶0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio contents includes selecting from a set of cities. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of cities to provide the local news and weather.

Regarding claim 18, Hsu discloses the content to include news and weather, ¶0056. Hsu does not expressly disclose selecting from a plurality of Internet Audio contents includes selecting from a set of audio contents that are within a geographic region. It would have been obvious to one of ordinary skill in the art at the time of the application to include selecting from a plurality of Internet Audio contents includes selecting from a set of audio contents that are within a geographic region to provide the local news and weather.

Regarding claim 19, Hsu discloses selecting from a plurality of Internet Audio contents includes selecting from a plurality of radio stations (¶0056, wherein subscribers to the broadcast service "tune in" to a designated channel, i.e. one of the audio streams, corresponds to selecting from a plurality of Internet Audio contents includes selecting from a plurality of radio stations).

Regarding claim 20, Hsu discloses changing the selection of the plurality of Internet Audio contents (¶0038 wherein subscribers to the broadcast service "tuning in"

to a designated channel corresponds to changing the selection of the plurality of Internet Audio contents).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Halliday, Christopher I. (US 20020038376 A1), FEAKES, K L et al. (GB 2358107 A1), FEAKES, K L (GB 2360169 A1), KIM, J G (KR 2002072434 A1), BLOEBAUM, L S et al. (US 20070129074 A1), Feakes, Kieren (US 20030103607 A1), SUZUKI, HIDEAKI (JP 2001218273 A1), Frantz; Robert Heflin (US 6167043 A1), Chang; Young-fu et al. (US 6198738 B1), Naudus; Stanley T. (US 6259691 B1), Elliott; Isaac K. et al. (US 6335927 B1), Jimenez, Ray et al. (US 20020006124 A1), McConnell; Von K. et al. (US 6944150 B1), Hsu, Raymond T. et al. (US 20030145064 A1), Hsu, Raymond T. (US 20030134651 A1), Melaku, Makonnen et al. (US 20030074443 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAXWELL A. CLARK whose telephone number is (571) 270-1956. The examiner can normally be reached on Monday through Thursday 7:30A.M. to 5P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 26, 2008

/Maxwell A. Clark/
Examiner, Art Unit 2616

/Huy D. Vu/
Supervisory Patent Examiner, Art Unit 2616